IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1675 OF 2007.
IN
LAND ACQUISITION REFERENCE NO.5 of 2003.
AND
LAND ACQUISITION REFERENCE NO. 9 OF 2005

Special Land Acquisition officer (3).
and
Shri Vijaysingh Chaturbhuj Karta & others. .. Claimants
and
The Deputy Chief Engineer (C)
MRT Railway. .. Acquiring Body.

Ms.J.Durve for the Applicant/Claimant No.1.

Ms.Calcuttawala for the S.L.A.O.

Shri Suresh Kumar for Acquiring Body.

CORAM : ABHAY S.OKA, J.

DATED : 10th October, 2007.

P.C.:

1. Heard the learned Counsel appearing for the parties. The prayer in the Chamber Summons is that the Applicant (Arun Merchant) may be allowed to be substituted as Claimant No.1 and be granted to leave to lead evidence in the matter. The Land Acquisition Reference No.9 of 2005 is filed by the Claimant (Vijaysingh Chaturbhuj, Karta and Manager of Chaturbhuj Vallabhdas (HUF). Reference No.5 of 2003 is under section 30 of the Land Acquisition Act, 1894 in which Claimant No.1 is again Shri Vijaysinh Chaturbhuj, Karta

and Manager of Chaturbhuj Vallabhdas (HUF). The affidavit in lieu of examination-in-chief of the said Vijaysinh Chaturbhuj has been already filed in Land Acquisition Reference No.5 of 2003. The said Vijaysinh Chaturbhuj is Claimant No.1 in his capacity as Karta and Manager of Chaturbhuj Vallabhdas HUF.

2. In affidavit-in-support of the Chamber Summons it is alleged that the said Vallabhdas Chaturbhuj is not maintaining good health. In paragraph 7 of the affidavit-in-support it is stated that the said Vallabhdas Chaturbhuj has stopped acting as Karta and he has released and relinquished his rights. It is stated that a declaration to that effect has been executed.

3. The said Vallabhdas Chaturbhuj is Claimant No.1 not in his personal capacity but in his capacity as Karta and Manager of the HUF. If he is incapable of appearing as a witness, the Applicant who is claiming to be a Member of the HUF can always lead evidence on behalf of the HUF by filing his affidavit in lieu of examination-in-chief. The prayer for substitution cannot be allowed.

4. Hence the Chamber Summons is dismissed. However, it will be open for the Applicant in the Chamber Summons to lead evidence in the Land Acquisition

Reference No.5 of 2003 as well as Land Acquisition Reference No.9 of 2005 by filing his affidavit in lieu of evidence.

5. There will be no order as to costs.

6. The Land Acquisition References will be placed for direction on 31st October 2007.

Judge.